

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LARRY J. ADAMS,

Plaintiff,

v.

Case No. 2:08-cv-156
HON. R. ALLAN EDGAR

KAREN PRUNICK, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on August 25, 2009. The Report and Recommendation was duly served on the parties. The Court has received objections from defendants. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Defendants argue that the Magistrate Judge erred by not considering each defendant's personal involvement in plaintiff's complaint. Defendants failed to assert a lack of personal involvement argument in their summary judgment motion. Defense counsel argues that it is the Magistrate Judge's burden to read the affidavits and find ways to dismiss the individual defendants. However, defense counsel fails to understand the role of the Court. The Court does not act as an advocate. That is defense counsel's job. When writing a motion for summary judgment and

supporting brief, defense counsel does not complete the job by simply presenting a brief with legal citations and then attaching affidavits as exhibits. It is defense counsel's job to make legal arguments. Applying a relevant factual analysis using relevant legal authority in the brief is the appropriate way to make a legal argument. Certainly, the Court could develop legal arguments independently. In fact, defendants could simply file affidavits and the Court could use the facts in the affidavits and apply those facts to the relevant law. Under such a procedure, there would be no need to have defense counsel appear in the case and the State of Michigan could save significant cost by eliminating a great number of Assistant Attorneys General from the payroll. That, of course, is not how the Court system functions. It the role of the attorneys to make the arguments before the Court and it is the role of the Court to make decisions based upon those arguments. It was not the Magistrate Judge's burden or role to address every possible argument that defense counsel could have presented in this case.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #54) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that defendants' motion for summary judgment (Docket #43) is DENIED.

Dated: 9/23/09

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE